

FIRE PROTECTION DISTRICTS:
CLASS ONE COUNTIES:
PENSIONS:

Fire protection districts may pension firemen on vote of people.
Section 67.200, RSMo Supp. 1967,
has no application to Section 321.220,
RSMo Supp. 1967.

OPINION NO. 163

March 26, 1968

Honorable A. Clifford Jones
State Senator
Seventh District, Ladue
9 Clermont Lane
Clayton, Missouri 63105



Dear Senator Jones:

In your letter of January 10, 1968, you requested an opinion from this office as follows:

"1. Was the 1965 amendment of Section 321.220, R. S. Mo. 1959 void when enacted as being in violation of Article VI, Section 25 of the Constitution as it existed at that time?

"2. Did the subsequent amendment of Article VI, Section 25 of the Constitution in 1966 give any validity to Section 321.220 as amended in 1965 if it was void when enacted?

"3. Was the 1965 amendment of Section 321.240, R.S.Mo. void as to its provision for a pension tax, as being in violation of Article VI, Section 25 of the Constitution as it existed at that time?

"4. Did the subsequent amendment of Article VI, Section 25 of the Constitution in 1966 give any validity to Section 321.240 as amended in 1965 if it was void when enacted?

"5. Does the term 'proper legislative action' as used in Section 67.200, R. S. Mo. 1967 mean that the legislative body of a political subdivision having more than forty million dollars assessed valuation may provide for the pensioning

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of its officers and employees and their widows and orphans without a vote of the people?

"6. Does Section 67.200, R. S. Mo. 1967 apply to fire districts having an assessed valuation in excess of forty million dollars, whether or not the 1965 amendment of Section 321.220, R. S. Mo. 1959 is held to be valid?

"7. If section 67.200, R. S. Mo. 1967 does apply to fire districts with an assessed valuation of forty million dollars or more could such a fire district finance a pension plan adopted under this section, in accordance with the provisions of Section 321.240, R. S. Mo. 1959, as amended in 1965, if the latter amendment is valid?"

We are enclosing herewith an opinion issued by this office on September 27, 1962, to the Honorable E. J. Cantrell, State Representative, St. Louis County, Missouri, to the effect that the legislature has the constitutional authority to enact subdivision 15 of Section 321.220, RSMo Supp. 1967, authorizing fire protection districts to provide a pension for salaried members of its fire department. Since this opinion was issued, Section 321.220 has been amended so as to permit a special tax to be levied for this purpose. We approve of the holding in this opinion regarding the constitutionality of Section 321.220, subdivision 15.

We believe this opinion answers the first four questions that you have submitted.

In the fifth, sixth and seventh questions you submit, you inquire whether the term "proper legislative action" as used in Section 67.200, RSMo 1967, means that the legislative body of a political subdivision with an assessed valuation of \$40,000,000 or more may provide for pensioning of its officers and employees without a vote of the people and whether this statute has any application to fire protection districts organized under Chapter 321, RSMo 1959, as it applies to first class counties.

Section 67.200, RSMo Supp. 1967, provides:

"1. Any political corporation or subdivision of this state, now having or which may hereafter have an assessed valuation of forty million dollars or more, except counties of the second class having a population in excess of sixty-five thousand which adjoins a county of the first class with a charter form of government, which does not now have a pension system for

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its officers and employees adopted pursuant to state law, may provide by proper legislative action of its governing body for the pensioning of its officers and employees and the widows and minor children of deceased officers and employees and to appropriate and utilize its revenues and other available funds for such purposes.

"2. In adopting a pension plan such counties, other political corporations or political subdivisions may provide for different benefits and requirements for elected officers and appointed officers and employees. Laws 1967, p. _____, S.B.Nos. 14 and 30, §1. "

This is a general statute which applies to every political corporation or subdivision of this state having an assessed valuation of forty million dollars or more except certain counties mentioned therein and provides that by "proper legislative action" the governing body of such political corporations or subdivisions may provide a pension for its officers and employees. It includes all employees and is not limited to salaried employees of the fire department of a fire protection district.

It is our view that the governing body of a political corporation or subdivision of this state as defined in Section 67.200 may provide for a pension to its employees without a vote of the people.

Section 321.220 (15), RSMo Supp. 1967, provides that a fire protection district is class one counties may provide for the pensioning of the salaried members of its organized fire department if approved by a majority of the qualified voters of the district as provided herein.

It is our view that Section 67.200, supra, has no application to pensioning of the salaried members of the organized fire department of a district organized under Section 321.220, RSMo Supp. 1967, because Section 67.200 is a general statute covering all employees of various political corporations and subdivisions while Section 321.220 is a special statute which applies only to salaried members of the fire department of a fire protection district. If a special provision of a statute applicable to a particular object is inconsistent with a general law, the special provision will prevail. State ex rel Monier vs. Crawford, 303 Mo. 652, 262 S.W. 341. This is true without regard to which statute was enacted first. State ex rel Equality Savings & Building Association v. Brown, 335 Mo. 781, 68 S.W.2d 55, followed in State ex rel Webster Groves Loan & Building Association, 334 Mo. 789, 68 S.W.2d 60.

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It is the opinion of this office that the provision of Section 67.200, supra, does not apply to pensioning of salaried members of the organized fire department of a district organized under Chapter 321, RSMo, in first class counties.

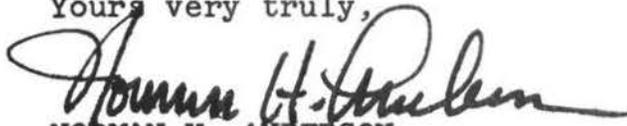
CONCLUSION

It is the opinion of this office that:

- (1) Section 321.220, RSMo Supp. 1967, is constitutional.
- (2) A fire protection district in class one counties may provide for pensions for the salaried members of its organized fire department if approved by a majority of the voters in the district.
- (3) Section 67.200, supra, has no application to the pensioning of salaried members of the organized fire department of a fire protection district organized in a class one county under Chapter 321, RSMo.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Yours very truly,



NORMAN H. ANDERSON
Attorney General

Enclosure - Opinion No. 329
Cantrell - 9/27/62